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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/174,042	10/16/1998	JURGEN HIRATH	ZTP-97-P-413	5077

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LERNER AND GREENBERG
POST OFFICE BOX 2480
HOLLYWOOD, FL 330222480

EXAMINER

ANDERSON, GERALD A

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 06/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/174,042

Applicant(s)

HIRATH ET AL.

Examiner

JERRY A ANDERSON

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2003.
- 2a) ☒ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 13 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- ☐ Interview Summary (PTO-413) Paper No(s) _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Applicant's arguments filed March 20, 2003 have been fully considered but they are not persuasive. The applicant alleges that the terms "given" and "corresponding" in claim 11 and 12 are not relative terms which renders the claim indefinite. That "given" is a standard term in claim language indicating that the same item is being referred to twice. Actually given means: specified. A given thickness is a specified thickness. A given date is issued on a specified date. The thickness of the inventions layers has not been specified or given. As for "corresponding" the applicant's definition agrees with the Examiner's objection. To what degree does the thickness of the region agree with the thickness of the layers? As the Examiner understand the invention the two layers are connected by the profile to enclose a space and one layer has an aperture with a flattened region of a tubes end section secured in a vacuum tight manner. The space is not evacuated as now claimed. Since it was the enclosed evacuated space that the applicant previously argued was not met by Comstock in view of Babbitt to which we shall now return.

In the previous response the applicant argued that Babbitt had not achieved a stable evacuated space because of the statement "so that the vacuum may be restored". The Examiner disagrees. Babbitt's statement occurring as it does after "vacuum may be increased" is intended to inform us that the valve can be used to increase the vacuum or to return the vacuum to the original level. Nothing in the disclosure leads us to believe that a vacuum cannot be maintained. All the seams and joints are said to be air-tight and thus vacuum-tight.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 1, 3, 5, 7, 8, 10 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The terms "given" and "corresponding" in claim 11 and 12 are relative and render the claims indefinite. The terms "given" and "corresponding" are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Comstock and Babbitt one taken in view of the other. Comstock is cited showing a wall two layers 172, 174 with apertures (see figure 4), a connecting profile 185, 220, insulating material (col. 1, lines 15-19) and a tube (see figure 10) with flattened regions at the ends 186.

Comstock fails to show a tube entirely of steel with flanges having a thickness corresponding to the thickness of the outer covers. Babbitt is cited showing an evacuated insulating container having two layers 1, 2, a profile 4, low pressure air in a space 9 as insulation and tubes 25 and 21 having flanges 22 and 23. All the components of Babbitt are disclosed as commonly made of metal, shown having equal thickness and are connected by welding for the purpose of providing air-tight joints.

Babbitt fails to show flattened end regions on the tube 25 or an insulating material.

Since the references are from the same field of endeavor the purposes of Babbitt and Comstock would have been obvious in the pertinent art of the other and it would have been obvious for one having an ordinary skill in the art to have modified Comstock making the container entirely from metal of a uniform thickness and welded air-tight joints for the purpose of providing a vacuum insulating unit in view of Babbitt or to have modified Babbitt by enlarging and flattening the ends of the tube 25 and providing insulating material in the space to better support the layers in view of Comstock.

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THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerry Anderson whose telephone number is 703 038 2202. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703 308 24668. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305 3597 for regular communications and 703 306 4195 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 2197.

Jaa
June 26, 2003

LANNA MAI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

